

No 446.

THE LORDS having appointed the defender to condescend on the onerous cause, and what were the instructions thereof, he condescended upon 4000 merks delivered in money by him to his brother, and offered to make faith, that it was truly so done, and that the act of Parliament required no further but oath of the party; which the LORDS sustained not, unless it were otherways instructed.—See REDUCTION.

Fol. Dic. v. 2. p. 252. Stair, v. 2. p. 13. & 23.

* * * Gosford reports this case :

IN a reduction at Whitehead's instance of a disposition made to Lidderdale by his brother, as being *in fraudem creditorum*, and posterior to the pursuer's debt, it was *answered*, That the disposition was opposed bearing for sums of money and onerous causes, so, by the act of Parliament 1621, anent dyvours, it could not be taken away but *scripto vel juramento partis*. It was *replied*, That the disposition being betwixt conjunct persons, viz. a brother and a brother, the defender ought to condescend upon an onerous cause, and instruct the same. It was *duplied*, That albeit the Lords have so decided in several cases where the rights flowed from a father to a son, yet this right flowing from a brother to a brother, and that for an onerous cause, and sums of money received, could not be reduced, but upon a reason referred to his oath *vel scripto*.

THE LORDS having considered the case so as to make a practick thereof, found, That the defender ought to condescend upon and instruct an onerous cause, seeing the disposition was made by one brother to another, and that it might open a door to great fraud and circumvention, if rights made betwixt such persons could not be questioned but while the reason was referred to the brother's oath; but if the relation were more remote than betwixt brother and brother, they inclined not to extend the same.

Gosford, MS. No 423. p. 213.

No 447.

1671. December 5:

DUFF against FORBES.

A DISPONEE having produced two bonds due to him by the disponer, and offering to give his oath, that these were the onerous cause of the disposition; the LORDS found this relevant.

Fol. Dic. v. 2. p. 252. Stair.

* * * This case is No 260. p. 12428.